

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SECURITIES AND EXCHANGE
COMMISSION,

Plaintiff,

v.

SMALL BUSINESS CAPITAL CORP., MARK
FEATHERS, INVESTORS PRIME FUND,
LLC, AND SBC PORTFOLIO FUND, LLC

Defendants.

Case No.: 12-cv-3237-EJD (PSG)

**ORDER GRANTING SECURITIES
AND EXCHANGE COMMISSION'S
MOTION TO COMPEL DEPOSITION**

(Re: Docket No. 357)

Plaintiff Securities and Exchange Commission ("SEC") moves to compel Defendant Mark Feathers ("Feathers") to sit for a videotaped deposition by May 1, 2013. The court granted the SEC's request to have the motion considered on shortened time and found that pursuant to Civil L.R. 7-1(b) a hearing was unnecessary to determination of the motion. Having considered the SEC's motion and Feather's opposition, the court GRANTS the SEC's motion.

A party "may, by oral questions, depose any person, including a party, without leave of court."¹ "Unless the court orders otherwise, testimony may be recorded by audio, audiovisual, or

¹ Fed. R. Civ. Proc. 30(a)

1 stenographic means.”² Discovery of “any non-privileged matter that is relevant to any party’s
2 claim or defense” is permissible.³

3 On March 12, 2013, the SEC served notice on Feathers for a deposition on April 3, 2013.⁴
4 In emails on March 19, 2013, Feathers at first appeared to agree to the deposition⁵ but following
5 notice that he had received leave to move for reconsideration regarding legal fees,⁶ Feathers
6 indicated he would not appear for the deposition on April 3.⁷ He requested that the SEC postpone
7 the deposition until Judge Davila issued an order regarding his motion for reconsideration.⁸ In
8 emails with counsel for the SEC, Feathers also objected to having his deposition videotaped
9 because he considers it “highly intrusive.”⁹
10

11 Because Feathers failed to sit for the noticed deposition, the SEC seeks now to have him
12 appear for a deposition before May 1, 2013.¹⁰ According to the SEC, the May 23, 2013 deadline
13 for summary judgment motions and the July 3, 2013 deadline for fact discovery cut-off support the
14 SEC’s request to have Feathers sit for the deposition by May 1. Feathers responds that he does not
15 object to appearing for the deposition; he only wants to delay the deposition until after May 14,
16 2013 so he has adequate time to prepare. Feathers further suggests that the deposition be
17 postponed until Judge Davila has ruled on his motion for reconsideration.
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20 ² Fed. R. Civ. P. 30(b)(3)(A).

21 ³ *Id.* 26(b).

22 ⁴ *See* Docket No. 352 Ex. 2.

23 ⁵ *See id.* Ex. 3.

24 ⁶ *See* Docket No. 302.

25 ⁷ *See* Docket No. 352 Ex. 4.

26 ⁸ *See id.*

27 ⁹ *See id.* Ex. 9.

28 ¹⁰ *See* Docket No. 353.

The court agrees that Feathers should sit for the deposition no later than May 1, 2013.

Feathers has had notice of the SEC's intent to depose him since March 12, 2013. Any failure to prepare for the deposition is of his own making. The court further notes that Judge Davila already has ruled that Feathers may not postpone the deposition until May 10.¹¹ The court also finds that pursuant Fed. R. Civ. P. 30(b)(3)(A), the SEC may videotape the deposition. Feathers has provided no good reason to prohibit the SEC from doing so and in fact made no argument regarding videotaping in his opposition.

Feathers did point out that the SEC set no end date or time for the deposition. In its notice to Feathers, the SEC stated that "[t]he deposition shall continue from day to day, as necessary, until completed."¹² Fed. R. Civ. P. 30(d)(1) states that "[u]nless otherwise stipulated or ordered by the court, a deposition is limited to 1 day of 7 hours." Although the court "must allow additional time consistent with Rule 26(b)(2) if needed to fairly examine the deponent" or if a person or circumstance "impedes or delays the examination,"¹³ the SEC has not moved the court to extend the deposition time and has not presented any facts supporting an extension. Feather's deposition shall be limited to one day for seven hours consistent with Rule 30(d)(1).

IT IS HEREBY ORDERED that Feathers will appear for a deposition on or before May 1, 2013, at a date and time set by the SEC in accordance with the discovery limits set in the Federal Rules of Civil Procedure.

IT IS FURTHER ORDERED that the deposition shall be limited to one day for seven hours in accordance with Rule 30(d)(1).

¹¹ See Docket No. 363.

¹² *Id.*

¹³ Fed. R. Civ. P. 30(d)(1).

IT IS FURTHER ORDERED that the deposition may be videotaped pursuant to either party's desire to have it recorded in that manner.

IT IS SO ORDERED.

Dated: April 22, 2013



PAUL S. GREWAL
United States Magistrate Judge

United States District Court
For the Northern District of California